

INITIAL STATEMENT OF REASONS

The following Initial Statement of Reasons has been prepared in regard to the proposal of the New Motor Vehicle Board ("Board") of the State of California to amend sections 550, 551.11, and 551.12 of Article 1, Chapter 2, Division 1, of Title 13 of the California Code of Regulations.

INTRODUCTION

The Board is an agency within the Department of Motor Vehicles ("Department") with oversight provided by the Business, Transportation and Housing Agency. The Board consists of nine members, seven of who are appointed by the Governor, one by the Speaker of the Assembly, and one by the Senate Rules Committee (Veh. Code §§ 3000 and 3001).

The duties of the Board include the following:

1. To adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code governing those matters that are specifically committed to its jurisdiction.
2. To hear and determine "appeals" which are filed by specified occupational licensees within the new motor vehicle industry as a result of adverse disciplinary action taken by the Department against the license of such entity. (Veh. Code § 3050(b)).
3. Consider any matter concerning the activities or practices of any person applying for or holding a specified type of occupational license. These disputes are considered by the Board as a result of the filing of a "petition", which may be done by any person. (Veh. Code § 3050(c)).
4. To hear and decide "protests" filed by new motor vehicle dealers against their respective franchisors, pursuant to the provisions of the Automotive Franchise Act. (Veh. Code §§ 3050(d), 3060, 3062, 3064, 3065, 3065.1, 3066, 3070, 3072, 3074, 3075, and 3076). These protests pertain to specified types of franchise disputes between the dealer (franchisee) and the manufacturer or distributor (franchisor).

SECTION 550

PURPOSE OF THE REGULATION

The purpose of the regulation is to define key terms used within the regulations governing the Board. The amendment of this regulation implements and makes specific what is meant by the term "Protestant" by referring to section 426 of the Vehicle Code. This amendment does not constitute a change in the law.

NECESSITY

The amendment to section 550 of the Board's regulations is necessary because it provides a definition for a term currently being used in the regulations. Without this definition, the regulations lack clarity because the term "Protestant" is not defined.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Board at its January 26, 2005, General Meeting, approved regulatory changes proposed herein for section 550.

ALTERNATIVES TO THE REGULATION

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At the January 26, 2005, General Meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. Board Members were advised that members of the public would be invited to submit written and oral comments during the Public Notice and Comment Period, and or the Public Hearing on the proposed regulatory changes. Further, while the Board instructed staff to go forward with the proposed rulemaking, it did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

SECTION 551.11

PURPOSE OF THE REGULATION

The purpose of the amendment is to promote efficiency and information disclosure by requiring the filing and exchange of settlement statements five business days prior to a scheduled settlement conference.

NECESSITY

The amendment of this regulation promotes the efficient settlement of cases by providing the parties and the Board with notice of the relevant issues, the positions of each of the parties, and an offer of settlement from each of the parties in advance of the settlement conference.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Board at its January 26, 2005, General Meeting, approved regulatory changes proposed herein for section 551.11.

ALTERNATIVES TO THE REGULATION

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At the January 26, 2005, General Meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. Board Members were advised that members of the public would be invited to submit written and oral comments during the Public Notice and Comment Period, and or the Public Hearing on the proposed regulatory changes. Further, while the Board instructed staff to go forward with the proposed rulemaking, it did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.

SECTION 551.12

PURPOSE OF THE REGULATION

The purpose of this amendment is to allow parties to ascertain the assignment of an administrative law judge 30 days prior to hearing. To add clarity to the procedures regarding peremptory challenges, this amendment also requires the filing of a peremptory challenge within 10 days of the assignment of an administrative law judge, or within 20 days of a hearing, whichever occurs first.

NECESSITY

The amendment to this regulation is necessary because litigants must know the procedure for assigning administrative law judges and the time frame in which a peremptory challenge must be filed in order to properly be afforded due process rights.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

The Board at its January 26, 2005, General Meeting, approved regulatory changes proposed herein for section 551.12.

ALTERNATIVES TO THE REGULATION

In accordance with Government Code section 11346.5, subdivision (a)(13), the Board must determine that no reasonable alternative it considered, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

At the January 26, 2005, General Meeting, wherein the Board preliminarily adopted the proposed regulatory text, no other alternatives were considered. Board Members were advised that members of the public would be invited to submit written and oral comments during the Public Notice and Comment Period, and or the Public Hearing on the proposed regulatory changes. Further, while the Board instructed staff to go forward with the proposed rulemaking, it did not necessarily indicate final Board action. If any written or oral comments were received, the full Board would consider the comments and reconsider the text of the proposed rulemaking. Lastly, if the staff decided that modifications to the proposed text were necessary, the Board would consider those modifications at a noticed meeting. If there were no written or oral comments received, then the rulemaking process will proceed without further Board involvement.